SUPREME COURT, U. S.

FILE

FEB 3

Number 74-629

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

PLACID OIL COMPANY, ET AL
(Texaco, Inc., Intervenor)

Petitioners

versus

STATE OF LOUISIANA, ET AL

Respondents

PETITION FOR REHEARING

W. SCOTT WILKINSON
Wilkinson, Carmody & Peatross
1708 Beck Building
Post Office Box 1707
Shreveport, Louisiana 71166
Area Code 318, 221-4196

ARMAND A. GUTIERREZ
Placid Oil Company
2500 First National Bank Building
Dallas, Texas 75202

Attorneys for Petitioners,
Placid Oil Company, et al

BIG BOOK PRESS, SHREVEPORT, LOUISIANA

TABLE OF CONTENTS

Subject	Page
PETITION FOR REHEARING	1
CONCLUSION	6
CERTIFICATE OF COUNSEL	7
PROOF OF SERVICE	8

Authorities Cited

Bonelli vs. State of Arizona, 414 U.S. 313, 38 L. Ed. 526. 5

Hughes vs. Washington, 389 U.S. 290, 298, 19 L. Ed. 2d 530 5

State vs. Bozeman, (1924), 156 La. 635, 101 So. 4 3

State vs. Cockrell, (1964), 162 So. 2d 361, Affd. 246 246 La. 343, 164 So. 2d 350 6

State vs. Erwin, (1931), 173 La. 507, 138 So. 84-85 ... 3

State vs. Placid Oil Co., (1974), 300 So. 2d 154 2

Number 74-629

IN THE

Supreme Court of the United States

OCTOBER TERM 1974

PLACID OIL COMPANY, ET AL
(Texaco, Inc., Intervenor)

Petitioners

versus

STATE OF LOUISIANA, ET AL

Respondents

PETITION FOR REHEARING

On January 13, 1975, this Court denied the petition for certiorari filed by Placid Oil Company and seventy-five riparian landowners of property bordering Six-Mile Lake through which the Atchafalaya River in Louisiana flows. Petitioners respectfully submit that Your Honors should grant a rehearing on that order and review the opinion and the decree of the Supreme Court of Louisiana for the reasons hereinafter shown.

This petition for rehearing is presented on the ground that a recent study of the terrain involved in this litigation shows that a substantial and highly valuable portion of the property claimed by and awarded to, the State of Louisiana and Gulf Oil Corporation, respondents herein, lies above the *present* high-water line of the waterbody in question. This

information has been received by petitioners since they filed their petition for certiorari, and was not presented to this Court, nor to the Supreme Court of Louisiana.

Petitioners did argue in the State court, and in their petition to this Court, that if the respondents were awarded the ownership of all land lying between the high-water line and the low-water mark then, in the alternative, the cause should be remanded for a determination of the location of the present high-water line in accordance with this Court's decision in *Bonelli vs. Arizona* rather than the high-water line as it existed in 1812 when Louisiana was admitted to the Union. The Louisiana Supreme Court ruled that the 1812 location governed rather than the present high-water line. In its opinion, the court said (300 So. 2d 154, Petitioners' App. "D", p. 169):

> "As correctly noted in our original opinion, the State of Louisiana upon its admission to the Union acquired title to all lands within its boundaries below the ordinary high-water mark of navigable bodies of water, with the power to determine the rights of riparian owners."

The court then stated (App. "D", p. 170):

> "The crucial determination is whether at the time of Louisiana's admission to the Union, Grand Lake—Six-Mile Lake was a stream or lake."

The court then decreed that the State has title to all lands below the high-water line as it was originally located, saying (App. "D", p. 179):

> "Judgment is rendered in favor of plaintiffs, State of Louisiana and Gulf Oil Corporation, against Placid Oil Company, J. Ray McDermott & Co., Inc., and all other defendants decreeing the State of Louisiana to be the owner of the property covered by State Lease 2963, dated April 18, 1956, to Gulf Oil Corporation, being more particularly described as follows:."

The court then described the northern boundary of the property in dispute, as follows (App. "D", p. 180):

> "thence South to the original South shore line of Six Mile Lake, and thence in an Easterly, Southeasterly and Northeasterly direction following the meanders of the original South shore line of said Six Mile Lake to the Eastern boundary of the area herein described;."

This was in line with the Louisiana jurisprudence that the State owns all land bordering a navigable lake up to the high-water mark as it existed when the State was admitted to the Union.[1] However, this ruling is contrary to Your Honors' decision in the *Bonelli* case that the State's ownership goes to the *present* high-water line (414 U.S. 317, 318, 38 L. ed. 534):

> "We hold that the ownership of the subject land is governed by federal law, and that the land surfaced by the narrowing of the river channel belongs, not to the State as owner of the riverbed, but to Bonelli, as riparian owner."
>
> "In order for the States to guarantee full public enjoyment of their navigable watercourses, it has been held that their title to the bed of a navigable river mechanically follows the river's gradual changes in course. See Oklahoma v Texas, 268 US 252, 69 L Ed 937, 45 S Ct 497 (1925)."

It requires no great stretch of the imagination to conclude that in these 160 years the Atchafalaya River, with its swift and strong current and tremendous volume of water flowing through Six-Mile Lake has wrought substantial changes in this waterbody. With the dredging of the river and channel through the lake for the past forty years and the construction of the Wax Lake Canal from a point west of the property in

---

[1] *State vs. Erwin* (1931), 173 La. 507, 138 So. 84-85
State vs. Bozeman (1924), 156 La. 635, 101 So. 4

question to the Gulf of Mexico, these changes have become quite pronounced in recent years. The Wax Lake Outlet which is 100 feet wide carries off a great volume of water that formerly flowed through the so-called lake. As a result of this outlet and the dredging of the channel through the lake, the high-water mark has made a substantial recession since 1812, leaving a large amount of land emergent. Under the *Bonelli* case this land is accretion which belongs to petitioners. The facts in the case at bar are parallel to those in *Bonelli* and the governing principles are the same.

The State court decision is furthermore contrary to the provisions of the *Submerged Lands Act* of Congress which confirms the title of the States of the Union to lands beneath navigable waters "up to the ordinary high-water mark as heretofore or hereafter modified by accretion, erosion, and reliction." 43 U.S.C. 1301 (a) (1), et seq.

The State and its lessee, Gulf Oil Corporation, in the pleadings filed in the trial court claimed title to the bed of Six Mile Lake up to the original high-water line as it existed in 1812, and attached to their petition a copy of an official plat which delineated this original shoreline. The defendants, petitioners here, admitted that this copy was a true copy of the original survey.

However, no issue was made in the courts below respecting the ordinary high-water mark as modified by accretion, erosion and reliction, and no evidence was offered to show the location of the present high-water line. The *Bonelli* decision of this Court had not been rendered and it was assumed that the high-water line as it existed when Louisiana was admitted to the Union fixed the limit of State ownership in the bed of the waterbody. Louisiana jurisprudence was to that effect. In view of the modifications of the bed of the river and lake by accre-

tion, erosion and reliction, the court below has awarded to respondents a substantial body of land above the present high-water line and the State has received a "windfall" which Your Honors have held that it is not entitled to. Again quoting *Bonelli*, 414 U.S. 322, 324, 38 L. Ed. 2d 537:

> "The equal-footing doctrine was never intended to provide a State with a windfall of thousands of acres of dry land exposed when the main thread of a navigable stream is changed."
>
> "When the water receded from the land, there was no longer a public benefit to be protected; consequently, the State, as sovereign, has no need for title."

The windfall to the State decreed by the court below will destroy the riparian character of the defendants' properties which *Bonelli* states "may be the lands 'most valuable feature' and is part and parcel of the ownership of the land itself. Riparianness also encompasses the vested right to future alluvion, which is an 'essential attribute of the original property.' " 414 U.S. 326, 38 L. Ed. 2d 539. The land above the present high-water line awarded to respondents lies between petitioners' properties and the waterbody itself and will deny to them any access to the waterway. The State court has accordingly divested petitioners of their vested rights and has taken their lands without compensation in violation of the Fourteenth Amendment. The due process clause forbids the taking of vested rights without compensation whether it is done by the courts or by the Legislature.[2]

Not only are the defendants deprived of their riparian rights but are obligated by the State Court decision to account for royalties which they have already received, as landowners, —a hardship that those of ordinary or limited means can

[2] *Hughes vs. Washington*, 389 U.S. 290, 298, 19 L. Ed. 2d 530
Bonelli Cattle Co. vs. Arizona, 414 U.S. 331, 38 L. Ed. 2d 541

ill afford. Their next door neighbors who were defendants in the case of *State vs. Cockrell*, (1964)[3] will however continue to enjoy their riparian rights and oil royalties which were confirmed to them in that earlier case—a case which is now repudiated and overruled by the same court that denied these same rights to petitioners.

CONCLUSION

Petitioners respectfully request that this Court's order, dated January 13, 1975, be set aside and recalled, that a rehearing be granted, and that a writ of certiorari to review the judgment of the Supreme Court of Louisiana be issued as prayed for in their original petition herein filed.

Respectfully submitted,

ORIGINAL SIGNED
W. SCOTT WILKINSON

W. SCOTT WILKINSON
Wilkinson, Carmody & Peatross
1708 Beck Building
Post Office Box 1707
Shreveport, Louisiana 71166
Area Code 318, 221-4196

ARMAND A. GUTIERREZ
Placid Oil Company
2500 First National Bank Building
Dallas, Texas 75202

Attorneys for Petitioners,
Placid Oil Company, et al

[3] *State vs. Cockrell*, (1964) 162 So. 2d 361, aff'd. 246 La. 343, 164 So. 2d 350

CERTIFICATE OF COUNSEL

Pursuant to Rule 58 of the United States Supreme Court, I hereby certify that the above and foregoing petition for rehearing is presented in good faith and not for delay, and that the petition is restricted to the grounds above specified.

ORIGINAL SIGNED
W. SCOTT WILKINSON

W. SCOTT WILKINSON
of counsel for Petitioners,
Placid Oil Company, et al

PROOF OF SERVICE

I, W. Scott Wilkinson, attorney for Placid Oil Company and other petitioners herein and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 31st day of January, 1975, I served copies of petitioners' petition for rehearing to the Supreme Court of the United States in the above matter by mailing three copies, first class postage prepaid, to respondents' attorneys of record, and copies to counselor for intervenor, as follows:

Hon. William J. Guste, Jr.
Hon. Kenneth DeJean
Attorney General's Office
State Capitol
Baton Rouge, Louisiana 70804

Mr. Booth Kellough, Attorney
Gulf Oil Corporation
Saratoga Building
New Orleans, Louisiana 70112

Mr. Charles C. Gremillion
Attorney at Law
22nd Floor, 225 Baronne Street
New Orleans, Louisiana 70112

Mr. Charles F. Bailey
Attorney at Law
Post Office Box 52209
Lafayette, Louisiana 70501

Mr. William J. Conrad, Attorney
Texaco, Inc.
Post Office Box 60252
New Orleans, Louisiana 70160

It is further certified that all parties required to be served have been served.

ORIGINAL SIGNED
W. SCOTT WILKINSON

W. SCOTT WILKINSON
1708 Beck Building
Post Office Box 1707
Shreveport, Louisiana 71166
Area Code 318, 221-4196

ARMAND A. GUTIERREZ
Placid Oil Company
2500 First National Bank Building
Dallas, Texas 75202

Attorneys for Petitioners,
Placid Oil Company, et al